

**PERMITTEE:** COURSE 43, LTD.

**PERMIT NUMBER:** 1999-00222(1)

**EFFECTIVE DATE:** \_\_\_\_\_

NOTE: The term you and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below. (and continue on page 5)

**PROJECT DESCRIPTION:** MR. RAY BLACKSMITH ON BEHALF OF COURSE 43, LTD., 7976 BROADVIEW ROAD, BROADVIEW HEIGHTS, OHIO 44147, IS HEREBY AUTHORIZED BY THE SECRETARY OF THE ARMY TO: FILL 7.77 ACRES OF WETLAND AND SELECTIVELY CLEAR AN ADDITIONAL 5.35 ACRES OF WETLAND DURING CONSTRUCTION OF THE SIGNATURE OF SOLON 18-HOLE GOLF COURSE AND RESIDENTIAL DEVELOPMENT IN ACCORDANCE WITH THE GENERAL AND SPECIAL CONDITIONS, AND THE PLANS AND DRAWINGS AND ANY ADDITIONAL SPECIAL CONDITIONS ATTACHED HERETO WHICH ARE INCORPORATED IN AND MADE A PART OF THIS PERMIT.

**PROJECT LOCATION:** THE PROJECT IS LOCATED IN UNNAMED WETLANDS AT WILLOW ROAD, IN THE CITY OF SOLON, CUYAHOGA COUNTY, OHIO.

## PERMIT CONDITIONS

### GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on \_\_\_\_\_. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you must make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you may obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

### FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

#### **Section 404 of the Clean Water Act (33 U.S.C. 1344).**

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any

liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

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(PERMITTEE)

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(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

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(DISTRICT COMMANDER)

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(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

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(TRANSFEREE)

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(DATE)

## SPECIAL CONDITIONS:

1. That mitigation is required to compensate for the permanent loss of function and value of 7.77 acres of jurisdictional wetlands. Approximately 2.95 acres of wetland will be filled and an additional 5.35 acres will be selectively cleared of vegetation. The two-part mitigation project will consist of on-site preservation of wetlands and associated upland buffer (a) and an off-site acquisition and preservation project (b):

a. A deed restriction and/or conservation easement shall be placed on 41.35 acres of existing wetland and stream corridor and 71.97 acres of adjacent upland forest that will remain on the parcel after construction of the Signature of Solon project. The restrictions shall specifically state that the mitigation areas are to remain as natural areas. A certified copy of the recorded deed restriction shall be provided to the Corps upon execution.

b. You have agreed to contribute \$400,000.00 to the City of Solon to acquire and preserve an off-site 80-acre parcel that contains approximately 72 acres of upland forest, an active great Blue Heron rookery and approximately 8.1 acres of wetland (Sheets 1, 5 and 6 of 6). This parcel will be preserved in perpetuity as an undeveloped natural area for the benefit of wildlife and as scenic open space. Perpetual deed restrictions shall be placed on the offsite mitigation parcel to guarantee its preservation for wetland and wildlife resources. The restrictions shall specifically state that the mitigation areas are intended to remain as undeveloped natural areas for the benefit of wildlife and the aesthetic enjoyment of humans. A certified copy of the recorded deed restriction shall be provided to the Corps upon execution.

2. That a preliminary archaeological survey must be conducted in the areas shown on sheet 4 of 6 of this permit and submitted to Ms. Julie Quinlan of the Ohio Historic Preservation Office, 567 Hudson Street, Columbus, Ohio 43211-1030. A copy of this survey and the response received from the Ohio Historic Preservation Office must be sent to the Corps of Engineers **prior** to work in any water of the United States on the Signature of Solon project.

3. That a survey must be conducted to determine if the following plants exist on the project site: Grass Pink (Calopogon tuberosus), Leather-Leaf (Chamaedaphne calyculata), Marsh Fivefinger (Potentilla palustris), Round-leaved Sundew (Drosera rotundifolia), Large Cranberry (Vaccinium macrocarpon), and Showy Lady's Slipper (Cypripedium reginae). The results of this survey must be sent to the Corps of Engineers. If any of the above mentioned plants are found, the survey must be accompanied by either a plan to avoid the area(s) or a relocation and monitoring plan. This information must be submitted to and approved by the Corps of Engineers **prior** to work in any water of the United States on the Signature of Solon project.

SPECIAL CONDITIONS CONTINUED:

4. There shall be no removal, destruction, or cutting of vegetation, spraying with herbicides, or disturbance or manipulation of the mitigation area without first obtaining Department of the Army authorization. Control of nuisance vegetation, or any other manipulation within the mitigation areas, shall only occur after receiving Corps of Engineers concurrence that such management practices are necessary to ensure the long-term success of the mitigation program.
5. That at the request of an authorized representative of the Buffalo District, U.S. Army Corps of Engineers, you shall allow access to the project site and the mitigation parcel to determine compliance with the conditions of this permit.
6. That you are responsible for ensuring that the contractor and/or workers executing the activity(s) authorized by this permit have knowledge of the terms and conditions of the authorization and that a copy of the permit document is at the project site throughout the period the work is underway.
8. That the disposal of trees, brush and other debris in any stream corridor, wetland or surface water is prohibited.
9. That efforts shall be made to keep construction debris from entering the waterway or wetland, and shall be removed immediately should any such debris be present in the waterway or wetland.
10. That trees with cavities or exfoliated bark shall not be cut between April 15 and September 15 without first conducting a mist survey (or other acceptable survey) for the Indiana bat. Trees with cavities or exfoliating bark may provide potential roosting habitat for this Federally listed endangered species. Additional information may be obtained by contacting Mr. Buddy Fazio of the U.S. Fish and Wildlife Service at (614) 469-6923.
11. That the Water Quality Certification issued for this project by the State of Ohio is part of this Department of the Army permit pursuant to Section 401(d) of the Clean Water Act. Noncompliance with any limitations or requirements stated in the certification may be a basis for suspension, revocation or modification of this permit.
12. Siltation barriers shall be installed between the wetlands and the adjoining development to prevent siltation into the wetlands.

13. All erosion and sediment control practices shall be in place prior to any grading or filling operations and installation of proposed structures or utilities. They shall remain in place until construction is completed and the area is stabilized.

SPECIAL CONDITIONS CONTINUED:

14. That as soon as possible following construction all exposed banks and slopes shall be seeded and mulched to prevent erosion.

15. That the movement of equipment within the wetland shall be limited to the minimum necessary to accomplish the work authorized herein.

16. That all equipment required to transverse wetland areas shall be supported on mats. This includes periodic maintenance of wetland play-over areas.

17. That the preparation of and the periodic vegetation maintenance activities on play-over areas on the golf course wetlands shall not involve disturbance of the soil, alteration of hydrology, or the application of herbicides without prior approval from the Corps of Engineers.

Department of the Army Permit No.: 1999-00222(1)

**NOTIFICATION OF APPEAL PROCESS (NAP)  
FOR A PERMIT DENIAL OR A DECLINED INDIVIDUAL PERMIT**

You are hereby notified that you and/or your authorized agent(s) may appeal a permit denial or a declined individual permit under the Corps of Engineers Administrative Appeal Process. The administrative appeal process may be initiated by completing the enclosed Request For Appeal (RFA) form. The RFA should be submitted to the division engineer, Great Lakes and Ohio River Division, P.O. Box 1159, Cincinnati, OH 45201-1159, and must be received by the division engineer within 60 days of the date of this NAP. The RFA will be reviewed and processed in accordance with the procedures set forth in 33 CFR Part 331.



### REQUEST FOR APPEAL (RFA)

Name of Appellant: Course 43, Ltd.

Corps File Number: 1999-00222(1)

Date Filed: \_\_\_\_\_

Reason(s) for Appeal:  
(attach additional pages as needed)

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#### CONDITIONS:

1. The reason(s) for requesting an appeal should be clearly stated, and your explanation must contain detailed information explaining the grounds for your appeal of the permit decision, or your appeal of the declined individual permit.
2. The appeal of a permit denial, or a declined individual permit, is limited to a review of the administrative record, the record of the appeal conference, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant or the Corps may raise new issues during the appeal process, but both parties may provide additional information as needed to clarify issues already identified in the administrative record.
3. You must grant right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

*I have read and fully understand the above conditions. I am signing this document to request initiation of an administrative appeal.*

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## Appellant

Department of the Army Permit No.: 1999-00222(1)

### **NOTIFICATION OF APPLICANT OPTIONS (NAO) FOR PARTIES ISSUED A DEPARTMENT OF THE ARMY INDIVIDUAL PERMIT**

You are hereby advised that the following options are available to you in your evaluation of the enclosed permit:

- 1) You may sign the permit, and return it to the district engineer for final authorization. Your signature on the permit means that you accept the permit in its entirety, and waive all rights to appeal the permit, or its terms and conditions.
- 2) You may decline to sign the permit because you object to certain terms and conditions therein, and you may request that the permit be modified accordingly. You must outline your objections to the terms and conditions of the permit in a letter to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this NAO, or you will forfeit your right to request changes to the terms and conditions of the permit. Upon receipt of your letter, the district engineer will evaluate your objections, and may: (a) modify the permit to address all of your concerns, or (b) modify the permit to address some of your objections, or (c) not modify the permit, having determined that the permit should be issued as previously written. In any of these three cases, the district engineer will send you a final permit for your reconsideration, as well a notification of appeal (NAP) form and a request for appeal (RFA) form. Should you decline the final proffered permit, you can appeal the declined permit under the Corps of Engineers Administrative Appeal Process by submitting the completed RFA form to the division engineer. The RFA must be received by the division engineer within 60 days of the date of the NAP that was transmitted with the second proffered permit.